Cahaya Baru Development Bhd v Lembaga Lebuhraya Malaysia

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–12 OF 2009 (J)
ALAUDIN PCA, ZULKEFLI AND RAUS SHARIF FCJJ
21 SEPTEMBER 2010

Land Law — Acquisition of land — Compulsory acquisition — Compulsory acquisition by state authority for construction of highway — Whether respondent had locus standi to file objection against award — Whether respondent had interest in compensation awarded — Service of Form E and Form G on respondent by land administrator — Respondent as 'paymaster' for acquisition — Whether respondent deemed to be 'person interested' in land — Land Acquisition Act 1961 ss 2, 11(1)(d), 14, 37 & 55(1)(a)

Words and Phrases — 'persons interested' — Whether respondent 'person interested' to justify filing notice of objection to land acquisition award — Land Acquisition Act 1960 s 2

The appellant ('plaintiff') was the registered owner of a piece of land ('the land'). The respondent ('defendant') was incorporated under the Highway Authority Malaysia (Incorporation) Act 1980 ('HAMA') and has a statutory obligation under s 11 of the HAMA to design, construct and maintain highways as determined by the Government of Malaysia. Pursuant to a *Gazette* notification by the Johor State Authority under s 8 of the Land Acquisition Act 1960 ('the Act') a portion of the said land was acquired for the construction of Senai-Pasir Gudang-Desaru Expressway ('the expressway project'). The acquisition was made under s 3(1)(a) of the Act and acquired for the Ministry of Public Works, Malaysia. The Land Administrator Johor Bahru ('LA') served a notice in Form E under the Act on the plaintiff and the defendant giving notice for the enquiry proceedings to determine the compensation to be awarded. Upon the conclusion of the enquiry the LA awarded a sum of RM30,734,903 ('the award') to the plaintiff as compensation. The LA served on the plaintiff and the defendant a Form G under s 14. The award was accepted by the plaintiff, but the amount of compensation under the award was objected to by the defendant. The defendant filed an application to refer the award to the court. The Form N stated that the defendant was a person interested pursuant to s 37(3) of the Act. The LA thereafter referred the defendant's objection to the High Court under s 38(5) of the Act. The plaintiff then applied by way of originating summons for declarations, inter alia, that the defendant had no locus and was not an interested person under s 37(3) read

with s 3 of the Act and thus not entitled to lodge an objection in Form N with the LA against the award. The learned judicial commissioner ('JC') granted the declarations sought by the plaintiff that the defendant had no standing to lodge any objection against the award made by the LA. The Court of Appeal allowed the defendant's appeal against the JC's decision. The plaintiff obtained leave to appeal against the decision of the Court of Appeal on the question whether the defendant was: (a) a 'person interested' within the meaning of s 37(3) of the Act; and (b) eligible to object to the compensation awarded to the plaintiff.

Held, dismissing the appeal with costs:

(1) In determining whether the defendant was a 'person interested' within the meaning of s 37 of the Act, the court had to take into account the background facts leading to the issuance of the declaration that the said land was required for public purpose under s 8 of the Act. When the defendant sent a letter dated 24 August 2004 to the Ministry of Public Works for the acquisition of the said land it had made reference to the Pekeliling Ketua Pengarah Tanah dan Galian ('KPTG') Bilangan 3/1979 which requires a body like the defendant to submit an application for any land that is needed to be acquired for a highway project to be made direct through the Ministry of Public Works. It was based on these facts that the Johor Bahru Land Office issued the declaration under s 8 of the Act declaring that the said land was to be acquired pursuant to s 3(1)(a) of the Act (see para 6).

(2) The effect of s 22(1) of the HAMA is that where any private land is needed to be compulsorily acquired for the construction of highways, then the private land may be acquired in accordance with any written law relating to the acquisition of land for a public purpose. Under HAMA, the plaintiff's land could only have been compulsorily acquired in accordance with s 3(1)(a) of the Act, for a public purpose. Notwithstanding that the compensation was paid by the defendant, it remained that the said Form D was a declaration that the said land was needed for a public purpose (see para 9).

(3) By virtue of s 11(1)(d) of the Act the decision fell entirely with the LA whether to serve Form E to any person whom he knew or has reason to believe to be interested in the said land. The fact that Form E was served on the defendant meant that the defendant had an interest to object to the quantum of the award as a person interested in the context of s 37 of the Act. The service of Form E on the defendant was provided for under s 55(1)(a) of the Act. The Form G was rightly served on the defendant by the LA by virtue of s 14 of the Act as the Land Office had acknowledged that the defendant was a 'person interested' within the meaning of s 37 of the Act (see para 10).

(4) The defendant as the 'paymaster' should be construed as a 'person interested' within the meaning of s 37(1) read with s 37(3) of the Act. A liberal approach must be adopted in construing the term 'person interested'. The questions posed were answered in the affirmative (see paras 11, 13 & 16).

[Bahasa Malaysia summary

Perayu ('plaintif') merupakan pemilik berdaftar sebidang tanah ('tanah'). Responden ('defendan') ditubuhkan di bawah Akta Lembaga Lebuhraya Malaysia (Perbadanan) 1980 ('ALLM') dan mempunyai kewajipan statutori di bawah s 11 ALLM untuk mereka, membina dan menyelenggara lebuh raya seperti yang ditentukan Kerajaan Malaysia. Berikutan pemberitahuan warta Kerajaan Negeri Johor di bawah s 8 Akta Pengambilan Tanah 1960 ('Akta') sebahagian tanah tersebut diambil untuk pembinaan Lebuh raya Senai-Pasir Gudang-Desaru ('projek lebuh raya tersebut'). Pengambilan tersebut dibuat di bawah s 3(1)(a) Akta dan diambil oleh Kementerian Kerja Raya Malaysia. Pentadbir Tanah Johor Bahru ('PT') menyerahkan notis di bawah Borang E di bawah Akta tersebut kepada plaintif dan defendan memberitahu prosiding siasatan bagi menentukan pampasan untuk diberikan. Tatkala penyimpulan siasatan, PT memberi award RM30,734,903 ('award tersebut') kepada plaintif sebagai pampasan. PT menyerahkan kepada plaintif dan defendan Borang G di bawah s 14 Akta. Award tersebut diterima plaintif, tetapi jumlah pampasan di bawah award tersebut dibantah defendan. Defendan memfailkan permohonan untuk merujuk award tersebut ke mahkamah. Borang N menyatakan bahawa defendan merupakan orang berkepentingan berikutan s 37(3) Akta. PT kemudiannya merujuk bantahan defendan ke Mahkamah Tinggi di bawah s 38(5) Akta. Plaintif kemudian memohon, menerusi saman pemula, untuk perisytiharan-perisytiharan, antara lain, bahawa defendan tiada locus standi dan bukan orang berkepentingan di bawah s 37(3) dibaca bersama s 3 Akta dan oleh itu tidak berhak membuat bantahan dalam Borang N dengan PT menentang award tersebut. Pesuruhjaya kehakiman yang bijaksana ('PK') memberikan perisytiharan-perisytiharan yang dipohon plaintif bahawa defendan tidak berkuasa untuk membuat apa-apa bantahan terhadap award yang dibuat PT. Mahkamah Rayuan membenarkan rayuan defendan terhadap keputusan PK. Plaintif telah mendapat keizinan untuk merayu terhadap keputusan Mahkamah Rayua atas persoalan sama ada defendan: (a) 'orang berkepentingan' dalam maksud s 37(3) Akta; dan (b) boleh membantah terhadap pampasan yang diawardkan kepada plaintif.

Diputuskan, menolak rayuan dengan kos:

(1) Dalam menentukan sama ada defendan adalah 'orang berkepentingan' dalam maksud s 37 Akta, mahkamah harus mengambilkira fakta-fakta latarbelakang yang menjurus kepada pengeluaran perisytiharan bahawa tanah tersebut diperlukan untuk tujuan awam di bawah s 8 Akta. Apabila

defendan menyerahkan surat bertarikh 25 Ogos 2004 kepada Kementerian Kerja Raya untuk pengambilan tanah tersebut, ia telah merujuk kepada Pekeliling Ketua Pengarah Tanah dan Galian ('KPTG') Bilangan 3/1979 yang mengkehendaki suatu badan seperti defendan untuk menyerahkan permohonan bagi mana-mana tanah yang perlu diambil bagi projek lebuh raya dibuat terus melalui Kementerian Kerja Raya. Berdasarkan fakta-fakta inilah Pejabat Tanah Johor Bahru mengeluarkan perisytiharan di bawah s 8 Akta mengisytiharkan tanah tersebut perlu diambil berikutan s 3(1)(a) Akta (lihat perenggan 6).

(2) Kesan s 22(1) ALLM adalah apabila tanah persendirian diperlukan untuk pengambilan wajib bagi pembinaan lebuh raya-lebuh raya, maka tanah persendirian tersebut boleh diambil berikutan dengan mana-mana undang-undang bertulis berkaitan pengambilan tanah untuk tujuan awam. Di bawah ALLM, tanah plaintif hanya boleh diambil secara wajib berikutan s 3(1)(a) Akta, untuk tujuan awam. Tanpa mengambilkira bahawa pampasan dibayar oleh defendan, adalah kekal bahawa Borang D merupakan suatu perisytiharan bahawa tanah tersebut diperlukan untuk tujuan awam (lihat perenggan 9).

(3) Berikutan s 11(1)(d) Akta, keputusan tersebut bergantung sepenuhnya kepada PT sama ada untuk mengeluarkan Borang E kepada mana-mana orang yang dia tahu atau mempuyai sebab untuk mempercayai dia berminat dalam tanah tersebut. Fakta bahawa Borang E diserahkan kepada defendan bermaksud bahawa defendan mempunyai sebab untuk membantah terhadap kuantum award tersebut sebagai orang berkepentingan dalam konteks s 37 Akta. Penyerahan Borang E kepada defendan diperuntukkan di bawah s 55(1)(a) Akta. Borang G telah diserahkan dengan betul kepada defendan oleh PT berikutan s 14 Akta kerana Pejabat Tanah telah mengiktiraf bahawa defendan merupakan 'orang berkepentingan' dalam maksud s 37 Akta (lihat perenggan 10).

(4) Defendan, sebagai 'paymaster' harus ditafsirkan sebagai 'orang berkepentingan' dalam maksud s 37(1) dibaca bersama s 37(3) Akta. Pendekatan liberal harus diambil dalam mentafsirkan terma 'orang berkepentingan'. Persoalan-persoalan yang dikemukakan dijawab secara mengiakan (lihat perenggan 11, 13 & 16).]

Notes

For compulsory acquisition, see 8(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1974–1975.

Cases referred to

Himalayan Tiles & Marble (P) Ltd v Francis Victor Coutinho (dead) by LRS & Ors AIR 1980 SC 1118, SC (refd)

Magasu Sundram a/l T Magasu & Ors v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2003] 5 MLJ 470; [2003] 2 CLJ 422, HC (refd)
Menteri Besar Negeri Sembilan (Pemerbadanan) v Pentadbir Tanah Daerah Seremban & Anor [1995] 3 MLJ 710; [1996] 1 AMR 82, CA (distd)
Sunder Lal v Paramsukhdas AIR 1968 SC 366, SC (refd)

Legislation referred to

Highway Authority Malaysia (Incorporation) Act 1980 ss 11, 11(1)(a), (d), 22, 22(1)
Land Acquisition Act 1894 [IND]
Land Acquisition Act 1960 ss 2, 3, 3(1), (1)(a), (b), (c), 8, 12, 14, 14(2), 37, 37(1), (3), 38(5), 55(1)(a), Forms D, E, G, N, O

Appeal from: Civil Appeal No J-01–144 of 2006 (Court of Appeal, Putrajaya)

RR Sethu (JD Goonting with him) (Abdul Hakim Abdul Rahman & Co) for the appellant.
Ramesh Sanghvi (Kassim Tadin, Wai & Co) for the respondent.
Siti Badariah Mohd Yusof (Senior Federal Counsel, Attorney General's Chambers) watching brief for the Government of Malaysia.

Zulkefli FCJ (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal by the appellant against the decision of the Court of Appeal which allowed the respondent's appeal against the decision of the High Court at Johor Bahru. Before the High Court, the appellant was the plaintiff and the respondent was the defendant. We shall refer the parties as they were before the High Court.

BACKGROUND FACTS

[2] The relevant background facts leading to the present appeal by the plaintiff may be summarised as follows:

(a) The plaintiff was the registered owner of the land held under PTD 171003 HS (M) 2996 Mukim Plentong, Daerah Johor Bahru, Negeri Johor ('the said land').

(b) The defendant is a corporate body incorporated under the Highway Authority Malaysia (Incorporation) Act 1980 ('HAMA 1980') and has a statutory obligation under s 11 of the HAMA 1980 to supervise and execute the design, construction and maintenance of highways as determined by the Government of Malaysia.

(c) On 18 November 2004, the Johor State Authority caused to be published in the *Gazette* under s 8 of the Land Acquisition Act 1960 ('the Act') a notice of intended acquisition (Form D under the Act) of a portion of the said land declaring that the said land was required for a public purpose. A

(d) The public purpose of the intended acquisition in Form D was expressed to be for the construction of Senai-Pasir Gudang-Desaru Expressway ('the expressway project') and it was stated, inter alia, in Form D that it was made under s 3(1)(a) of the Act and acquired for the Ministry of Public Works, Malaysia. B

(e) The Land Administrator Johor Bahru ('LA') served a notice in Form E under the Act on the plaintiff and the defendant giving notice for the enquiry proceedings to determine the compensation to be awarded. C

(f) An enquiry under s 12 of the Act was held by the LA in respect of the acquisition. Upon the conclusion of the enquiry the LA awarded a sum of RM30,734,903 ('the award') to the plaintiff as compensation for the acquisition of 19.825 hectares of the said land. D

(g) The LA served on the plaintiff and the defendant a Form G dated 20 April 2006 under s 14 of the Act on the compensation awarded to the plaintiff. E

(h) The award was accepted by the plaintiff, but the amount of compensation under the award was objected to by the defendant.

(i) On 25 May 2006, the defendant filed an application that an objection in relation to the award be referred to the court in the requisite Form N under the Act. The said Form N stated that the defendant was a person interested pursuant to s 37(3) of the Act. F

(j) The LA thereafter referred the defendant's objection in Form N to the Johor Bahru High Court by way of Form O under s 38(5) of the Act. G

(k) On 7 February 2007, the plaintiff applied by way of originating summons to the High Court for declarations, inter alia, that the defendant had no locus and was not an 'interested person' under s 37(3) read with s 3 of the Act and thus not entitled to lodge an objection in Form N with the LA against the award. H

(l) The reference made by the LA pursuant to s 38(5) of the Act has been registered under Johor Bahru High Court Land Reference Proceedings No 15–40 of 2007 and it has been stayed pending the disposal of the plaintiff's present appeal before this court. I

(m) The learned judicial commissioner of the High Court granted the declarations sought by the plaintiff that the defendant had no standing to lodge any objection against the award made by the LA.

(n) The defendant appealed to the Court of Appeal against the decision of the learned judicial commissioner of the High Court in granting the declarations sought by the plaintiff. The Court of Appeal allowed the defendant's appeal and set aside all the orders made by the High Court.

(o) The plaintiff obtained leave of the Federal Court to appeal against the decision of the Court of Appeal on the following question:

Whether the respondent (defendant) is:

(a) a 'person interested' within the meaning of s 37(3) of the Land Acquisition Act 1960 (as amended) ('the Act'); and

(b) eligible to object to the compensation awarded to the appellant (the plaintiff) when the portion of the appellant's land was acquired under s 3(1)(a) of the Act by the state authority for the Ministry of Public Works, Malaysia.

DECISION

[3] Learned counsel for the defendant submitted before us that in this case the said land was acquired by the state authority for a public purpose under s 3(1)(a) of the Act. The Form N lodged by the defendant under s 37(3) of the Act is premised on the basis that the defendant is a person interested in the land. Under the Act the acquisition of land for public purpose is only permitted under s 3(1)(a). In contrast learned counsel for the plaintiff submitted that s 3(1)(b) of the Act provides for the acquisition of land by any person or corporation like the defendant in this case in the circumstances enumerated therein. Therefore the acquisition of the said land under s 3(1)(a) of the Act rules out the involvement of the defendant as the land is acquired by the state authority for a public purpose. The case of *Menteri Besar Negeri Sembilan (Pemerbadanan) v Pentadbir Tanah Daerah Seremban & Anor* [1995] 3 MLJ 710; [1996] 1 AMR 82 was cited for the plaintiff as the authority for such a proposition. This contention of the plaintiff found favour with the learned judicial commissioner of the High Court who ruled that the defendant is not a person interested in the said land. However, the Court of Appeal on appeal reversed the decision of the High Court and ruled that the defendant is in fact a person interested in the said land under s 37 of the Act and entitled to take objection against the amount of compensation awarded by the LA to the plaintiff.

[4] The principal issue to be determined in this appeal is whether the defendant is a person interested within the meaning of s 37(3) of the Act. Section 37 of the Act provides as follows:

37 Application to Court

(1) Any person interested in any scheduled land who, pursuant to any notice under

section 10 or 11, has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to —

(a) the measurement of the land;

(b) the amount of the compensation;

(c) the persons to whom it is payable;

(d) the apportionment of the compensation.

(2) Where the total amount awarded in compensation in respect of any interest in any scheduled land does not exceed three thousand ringgit the written award of the Land Administrator shall be final with regard to both the measurement of the land and the amount of compensation awarded, and no objection may be made under subsection (1) in respect thereof.

(3) Where the total amount of any award in respect of any scheduled land exceeds fifteen thousand ringgit any Government or any person or corporation undertaking a work which in the opinion of the State Authority is of public utility, and on whose behalf such land was acquired pursuant to section 3, shall be deemed to be a person interested in any schedule land under subsection (1), and may make objections on any of the grounds specified in subsection (1).

[5] It is also necessary to reproduce herein the provision of s 3(1) of the Act under which the acquisition of the land was made as follows:

3 Acquisition of land

(1) The State Authority may acquire any land which is needed —

(a) for any public purpose;

(b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or

(c) for the purpose of mining or for residential, agricultural, commercial or industrial or recreational purposes or any combination of such purposes.

[6] We are of the view in determining whether the defendant is a 'person interested' within the meaning of s 37 of the Act one has to also take into account the background facts leading to the issuance of the declaration that the said land was required for public purpose under s 8 of the Act. It is to be noted from the evidence adduced in this case that when the defendant sent a letter dated 24 August 2004 to the Ministry of Public Works for the acquisition of the said land it had made reference to the Circular, namely the Pekeliling Ketua Pengarah Tanah dan Galian ('KPTG') Bilangan 3/1979 which requires a body like the defendant to submit an application for any land that was needed to be acquired for a highway project to be made direct through the Ministry of

Public Works. This was then followed by the letter dated 2 September 2004 from the Ministry of Public Works to the KPTG wherein the former required the latter to take relevant steps to acquire the lands from the Johor State Authority. It was based on these background facts that the Johor Bahru Land Office issued the declaration under s 8 of the Act declaring that the said land was to be acquired pursuant to s 3(1)(a) of the Act for the construction of the expressway project for the Ministry of Public Works.

[7] We are also of the view that the Court of Appeal in its judgment had rightly stated that the nexus between the defendant and the Ministry of Public Works and the fact that the defendant is a statutory agency of the Ministry of Public Works by way of a Government *Gazette* dated 24 February 2004 vide PU(A) 206 are relevant considerations which were entirely overlooked by the learned judicial commissioner of the High Court in arriving at his decision. It must be borne in mind that by virtue of s 11(1)(a) of the HAMA 1980, the defendant has a duty to supervise and execute the design, construction and maintenance of highways as determined by the Government of Malaysia.

[8] As regards the general powers of the defendant to acquire land, useful reference may be made to s 22 of the HAMA 1980 which provides as follows:

> 22 General powers to acquire land
>
> (1) Where any immovable property, not being State land or reserved land, is needed to be acquired for the purpose of this Act and cannot be acquired by agreement, such property may be acquired in accordance with the provisions of any written law relating to the acquisition of land for a public purpose for the time being in force in the State in which the property is situated and any declaration required under any such written law that the land is so needed may be made notwithstanding the compensation is to be paid out of the funds of the Authority, and the said declaration shall have effect as if it were a declaration that the land is needed for a public purpose made in accordance with the said written law.
>
> (2) Expenses and compensation in respect of any immovable property acquired under this section shall be paid by the Authority.
>
> (3) Where any immovable property has been acquired under this section, the Authority shall take out the necessary document of title in respect of the property and shall pay any rent to which the property is subject.

[9] The effect of the above s 22(1) of the HAMA 1980 in our view is that where any private land is needed to be compulsorily acquired for the construction of highways, then the private land may be acquired in accordance with any written law relating to the acquisition of land for a public purpose. The declaration that the private land is so needed shall have effect as if it were a declaration that the private land is needed for a public purpose made in

accordance with the said written law. Under HAMA 1980, therefore the said land of the plaintiff could only have been compulsorily acquired in accordance with the written law, namely under s 3(1)(a) of the Act, for a public purpose. The said land of the plaintiff could not have been acquired in accordance with the Act under s 3(1)(b) or (c). Notwithstanding that the compensation was paid by the defendant, it remained that the said Form D was a declaration that the said land was needed for a public purpose.

[10] It is our judgment that the LA had acted and exercised his powers in accordance with the relevant provisions of the Act in the acquisition of the said land. We agree with the finding of the Court of Appeal that the learned judicial commissioner had failed to consider that by virtue of s 11(1)(d) of the Act the decision fell entirely with the LA whether to serve Form E to any person whom he knows or has reason to believe to be interested in the said land. In the present case the fact that Form E was served on the defendant meant that the defendant had an interest to object to the quantum of the award as a person interested in the context of s 37 of the Act. The defendant's representative had made it known to the LA and the plaintiff that the defendant had objections to the award made by the LA. The service of Form E on the defendant was provided for under s 55(1)(a) of the Act. The Form G was rightly served on the defendant by the LA by virtue of s 14 of the Act as the land office had acknowledged that the defendant is a 'person interested' within the meaning of s 37 of the Act.

[11] We would like also to refer to s 2 of the Act which defines the term 'person interested' to include every person claiming an interest in compensation to be made on account of the acquisition of land under this Act. On this point we agree with the view taken by the Court of Appeal that the defendant as the 'paymaster' should be construed as a 'person interested' within the meaning of s 37(1) read with s 37(3) of the Act.

[12] As regards the case of *Menteri Besar Negeri Sembilan (Pemerbadanan) v Pentadbir Tanah Daerah Seremban & Anor* relied on by the plaintiff, we find on the facts that case can be distinguished from the present case. As rightly found by the Court of Appeal, there, the Menteri Besar Negeri Seremban (Pemerbadanan) is a statutory body with powers to undertake ventures of a commercial or industrial nature independently or jointly with another company. Here, the defendant is a statutory agency of the Ministry of Public Works and has a statutory duty to supervise and execute the design, construction and maintenance of Highways as determined by the government as provided for in s 11(1)(a) of the HAMA 1980. That case did not show nor indicate whether the LA had served Form E and Form G on the defendant and whether the defendant there had attended the enquiry. Neither did the case there show as to who was the 'paymaster' for the award. In that case too, the

Form D notice for the proposed acquisition had indicated that the purpose was for a public purpose, that is the creation of the Nilai New Town. This therefore ruled out the involvement of any other person on whose behalf the land was acquired by the state authority. Moreover, all these issues were decided by the Land Reference Court and not by way of an originating summons like the present appeal at hand wherein the plaintiff sought the declaratory reliefs against the defendant before the learned judicial commissioner of the High Court.

[13] We would like to state here we agree with the Court of Appeal that a liberal approach must be adopted in construing the term 'person interested'. In the case of *Magasu Sundram a/l T Magasu & Ors v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 5 MLJ 470; [2003] 2 CLJ 422, the High Court was confronted with an application by the intended intervener who was appointed to procure a higher award of compensation on behalf of the first claimant and having been promised a 10% share of any additional compensation he could obtain, sought to intervene in the proceedings between the claimants and the land administrator. In deciding whether the intended intervener fell within the scope of the term 'person interested' in ss 2 and 14(2) of the Act, Azmel Maamor J (later FCJ) said at p 474 (MLJ) and p 425 (CLJ) of the report:

> The term 'person interested' is inconclusive and a person can be said to be a person interested if he has interest in the land either directly or indirectly or if he has an interest in the compensation in respect of the land acquired.

[14] The Indian Supreme Court in the case of *Himalayan Tiles & Marble (P) Ltd v Francis Victor Coutinho (dead) by LRS & Ors* AIR 1980 SC 1118 at p 1121, had this to say in regard to the term 'person interested' under the Indian Land Acquisition Act 1894:

> 13 Thus, the preponderance of judicial opinion seems to favour the view that the definition of 'person interested' must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital?

[15] Again, the Indian Supreme Court in the case of *Sunder Lal v Paramsukhdas* AIR 1968 SC 366 at p 369 had this to say:

> It will be noticed that it is an inclusive definition. It is not necessary that in order to fall within the definition a person should claim an interest in land, which has been acquired. A person becomes a person interested if he claims an interest in

> compensation to be awarded. It seems to us that Paramsukhdas is a 'person interested' within s 3(b) of the Act because he claims an interest in compensation.

Continuing at at p 370, the Indian Supreme Court said in the same case:

> It would be strange to come to the conclusion that the Legislature is keen that a person claiming an interest in compensation should be heard before the land is acquired but is not interested in him after the land is acquired.

CONCLUSION

[16] For the reasons above stated we would answer the questions posed in this appeal in the affirmative. The appeal by the plaintiff is therefore dismissed with costs. The deposit paid by the plaintiff is to be paid to the defendant towards costs.

Appeal dismissed with costs.

Reported by Kanesh Sundrum